



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: PHE/Maser, Inc.

File: B-238367.4

Date: July 5, 1990

John A. Whitney, Esq., McGuffie, Greif, Whitney & Handal, for the protester.
Donald T. Canning, Esq., for The Harris Group, and Michael F. Lawrence, for Jack Faucett Associates, interested parties.
Col. Herman A. Peguese, Office of the Assistant Secretary, Department of the Air Force, for the agency.
Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly determined to open negotiations, after an initial determination to award to protester, is untimely when filed more than 10 days after basis for protest was known.

DECISION

PHE/Maser, Inc. protests the decision to open negotiations under request for proposals (RFP) No. F49642-89-RA190, issued by the Department of the Air Force for diversified environmental technical support contract services. As the apparent successful offeror under the original evaluation, PHE/Maser contends that it is improper to open negotiations, and that it should be awarded the contract.

We dismiss the protest.

The RFP was issued on August 28, 1989, as a total small business set-aside. Several proposals were received by the October 30, 1989, closing date and evaluated by the Air Force. On January 9, 1990, Geo-Marine, Inc. was notified of its elimination from the competitive range, and it protested to our Office (B-238367). Upon review of the procurement, the Air Force discovered flaws in the RFP's evaluation provisions and issued amendment 0004 which included certain man-hour estimates to correct those flaws. As a result, we

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dismissed Geo-Marine's protest as academic on February 5, 1990.

Proposals were reevaluated and the Air Force determined that PHE/Maser was the apparent successful offeror based on the original proposals and labor rates submitted in response to amendment 0004. The Air Force determined that revisions to technical proposals were not necessary and advised all offerors of PHE/Maser's status as the apparent successful offeror. Protests then were filed by The Cadmus Group, Inc. (B-238367.2) and Dresdner, Robin & Associates (B-238367.3). Both complained about the lack of negotiations and Dresdner also protested PHE/Maser's responsibility. Other offerors advised the Air Force that they challenged PHE/Maser's status as a small business.

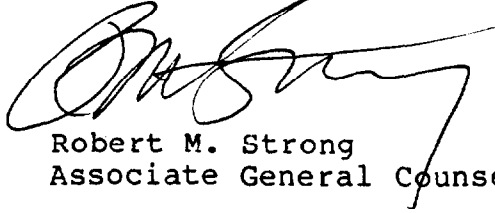
The contracting officer considered the questions raised concerning PHE/Maser's responsibility, eligibility, and technical acceptability, the age of the proposals, and the presence of evaluated, but undiscussed deficiencies in proposals, and determined that discussions should be conducted. As a result of this decision, we dismissed the Cadmus and Dresdner protests as academic, on May 3 and 8, respectively.

Our Friday, May 4, 1990, the Air Force telephoned PHE/Maser and the other offerors to advise them of an opportunity to pick up a package which included copies of the protests which had been filed with our Office, and an Air Force cover letter which indicated the government would request best and final offers (BAFOs). In addition, on Monday, May 7, the contracting officer met with a representative of PHE/Maser and explained the agency's decision to forego award and request BAFOs from all offerors in the competitive range, including PHE/Maser. The contracting officer also gave PHE/Maser a letter, dated May 4, which outlined the decision to open discussions and advised that offerors would be notified of the arrangements. On May 23, PHE/Maser filed a protest with our Office.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1990), a protest must be filed not later than 10 working days after the basis of protest is known or should have been known. PHE/Maser learned its basis of protest--the Air Force's decision to forego award to it and open discussions with all offerors in the competitive range--on May 7, more than 10 working days before it filed its protest on May 23. Accordingly, the protest is untimely and not for

consideration on the merits. See Midwest CATV, B-233105.3,
Apr. 4, 1989, 89-1 CPD ¶ 351.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name and title.

Robert M. Strong
Associate General Counsel